

REMARKS

Claims 1-7, 20, and 22-32 are now pending in the application. Claims 1, 4, 6, 20, 22, 25, 27, and 30-32 have been amended. Claim 1 has been amended simply to correct a grammatical oversight in the preamble. Claim 20 have been amended to insert a comma. The basis for the foregoing amendments may be found throughout the written description, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-7, 20 and 22-31 stand rejected under 35 U.S.C. § 103(a) as being anticipated by U.S. Publication 2002/0019649 (Sikora) and further in view of U.S. Pat. No. 5,702,462 (Oberlander) and U.S. Publication 2003/0130694 (Bojarski). This rejection is respectfully traversed.

The advisory action mailed December 14, 2007 states:

Applicant argues that it would not be obvious to one of ordinary skill in the art to modify Sikora in view of Oberlander because Oberlander teaches away from placing any anchors outside of the tissue, and instead requires that BOTH anchors are placed within the tissue. This is not persuasive because Sikora does not teach away from Oberlander. It would make sense to one of ordinary skill in the art to improve the method taught by Sikora by placing at least one anchor within the tissue because it enhances the repair of the tissue (column 4, lines 3-34). Further, Oberlander does not require that the entire anchor (11a) is located within the tissue (column 4, lines 15-16).

Applicant notes that this cited text of Oberlander states (emphasis added):

The anchoring member dart 11a is inserted through the upper surface 31c of the meniscus and transversely across the plane of tear 31d until dart 11a is lodged at least partially and preferably completely in the meniscal tissue distal to the distal surface 31e of the tear 31d (FIGS. 4 and 5).

The advisory action appears to be arguing Applicant's point. Namely, Oberlander specifically teaches away from locating any anchors on an outer surface of the tissue. The underlined portion specifically teaches that the anchor is "at least partially and preferably completely in the meniscal tissue". This portion of text does not state preferably "on the outer surface of the body tissue" (meniscus) as recited in claims 1, 20 and 27 of the instant application.

Furthermore, Applicant submits that it is improper to combine references where the references teach away from their combination. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference,... would be led in a direction divergent from the path that was taken by the applicant." *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999). See also MPEP 2145. Applicant submits that the MPEP does not require that *both* references specifically teach away from combining with the other reference.

Oberlander specifically teaches away from locating any anchors on an outer surface of the tissue. Oberlander identifies deficiencies in the prior art that require an entrance puncture and an exit puncture. Specifically, Oberlander states, "all of these techniques involve the penetration of the meniscus on two sides, thereby creating an entrance puncture and an exit puncture, the exit puncture typically being located at the outer rim of the meniscus". See Col. 1, Lines 65-67 through Col. 2, Line 1. By requiring both anchors to be embedded within the tissue (see FIG. 6 above), Oberlander overcomes the deficiencies identified in the prior art. Applicant submits that it is established that where references, instead of suggesting the invention, seek to warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837

F.2d 1071, 1074 (Fed. Cir. 1988) (citing W.L. Gore & Assocs. V. Garlock, Inc., 721 F.2d 1540, 1550 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

AMENDED CLAIMS

Claims 4, 6, 22, 25, 27 and 30-32 have been amended to further define the instant application over the cited art. Claims 4 and 25 have been amended to include "locating a blunt (distal) end of a hollow tube adjacent to the body tissue without penetrating the body tissue". Similarly, claim 30 has been amended to include "locating a blunt end of a hollow tube on said second insertion position without penetrating the meniscus". Support for these amendments may be found in the application as originally filed such as in at least FIGS. 5 and 6. Claim 22 has been amended to include "securing said first terminal end of said flexible member at only one location to said retaining head; molding said second terminal end of said flexible member to said anchor". Support for this amendment may be found in the application as originally filed such in at least FIG. 1A and paragraph [0025]. Claim 27 has been amended to recite "inserting a cannulated piercing member having a piercing end and defining a first length". Claim 30 has also been amended to include "locating a blunt end of a hollow tube on said second insertion position without penetrating the meniscus, said hollow tube containing said anchor therein said hollow tube having a second length that is less than said first length, such that said piercing end extends beyond said blunt end; and ...said anchor piercing the meniscus during said advancing". Support for this amendment may be found in the application as originally filed such in at least FIG. 6 and paragraphs [0028] – [0030]. Claim 32 has been amended to include "inserting said


cannulated piercing member and locating said blunt end are simultaneously performed". Support for this amendment may be found in the application as originally filed such in at least FIGS. 6-8 and paragraphs [0028] – [0030]. Applicant submits that these features are not shown by the collective art of record.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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